

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

TIFFANY SPILLER	§	
<i>Plaintiff</i>	§	
	§	
V.	§	CIVIL ACTION NO. 1:06-CV-722
	§	
BEAUMONT INDEPENDENT SCHOOL	§	JUDGE MARCIA A. CRONE
DISTRICT, DR. CARROL THOMAS,	§	
individually and in his representative capacity,	§	
ROLAND ANTOINE, individually and	§	
in his representative capacity, AND	§	
TOMMY FLOYD GRANGER,	§	
individually and in his representative capacity	§	
<i>Defendants</i>	§	

DEFENDANTS' SUPPLEMENT TO PENDING MOTION FOR SUMMARY JUDGMENT
(Docket No. 46)

TO THE HONORABLE COURT:

Defendants Beaumont Independent School District (“BISD”), Dr. Carroll Thomas (“Thomas”), and Roland Antoine (“Antoine”) file this Supplement to their Motion for Summary Judgment filed on October 14, 2008 (Docket No. 46).

1. On November 14, 2006, Plaintiff, Tiffany Spiller (“Spiller”) brought this suit against BISD, Thomas, Antoine, and Tommy Floyd Granger (“Granger”), resulting from alleged sexual abuse by Granger, former aide at Ozen High School. In August 2006, Defendant Granger was indicted for the criminal act made the subject of this lawsuit. In August 2007, Defendant Granger was acquitted of the criminal act made the subject of this lawsuit.

2. Defendants BISD, Thomas, and Antoine filed their Motion for Summary Judgment on October 15, 2008. The Motion for Summary Judgment is still pending before the Court.

3. Thomas and Antoine are sued in their individual and official capacities. Spiller has requested exemplary damages against Thomas and Antoine.

4. Defendants supplement their Motion for Summary Judgment. Spiller's claim for exemplary damages against Thomas and Antoine are barred because the alleged harm Spiller suffered resulted from the alleged criminal act of another.

5. In an action arising from harm resulting from an assault, theft or other criminal act, a court may not award exemplary damages against a defendant because of the criminal act of another. TEX. CIV. PRAC. & REM. CODE ANN. Section 41.005(a)(Vernon 2007). The exemption provided by Section 41.005(a) does not apply if: (1) the criminal act was committed by an employee of the defendant; (2) the defendant is criminally responsible as a party to the criminal act under the provisions of Chapter 7, Penal Code; (3) the criminal act occurred at a location where, at the time of the criminal act, the defendant was maintaining a common nuisance under the provisions of Chapter 125, Civil Practice and Remedies Code, and had not made reasonable attempts to abate the nuisance; or (4) the criminal act resulted from the defendant's intentional or knowing violation of a statutory duty under Subchapter D, Property Code, and the criminal act occurred after the statutory deadline for compliance with that duty. TEX. CIV. PRAC. & REM. CODE ANN. Section 41.005(b) (Vernon 2007). In an action arising out of a criminal act committed by an employee, the employer may be liable for punitive damages but only if: (1) the principal authorized the doing and manner of the act; (2) the agent was unfit and the principal acted with malice in employing or retaining him; (3) the agent was employed in a managerial capacity and was acting in the scope of employment; or (4) the employer or manager of the employer ratified or approved the act. TEX. CIV. PRAC. & REM. CODE ANN. Section 41.005 c)(Vernon 2007).

6. The exceptions set forth in Section 41.005(b) and c), TEX. PRAC. & REM. CODE ANN., are not applicable in this case. Therefore, Plaintiff Tiffany Spiller is not entitled to exemplary damages against Thomas, individually, or Antoine, individually, for the alleged criminal act committed by Defendant Granger.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant their Motion to Dismiss for Failure to State a Claim regarding Plaintiff Tiffany Spiller's claim for exemplary damages against Dr. Carroll Thomas, individually and Roland Antoine, individually.

Respectfully submitted,

WELLS, PEYTON, GREENBERG &
HUNT, LLP

By: /s/ Melody G. Chappell

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ROLAND ANTOINE

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Defendants Beaumont Independent School District, Dr. Carroll Thomas, and Roland Antoine conferred with Plaintiff's Counsel (Peggy S. Bittick) and she is opposed to the motion, and to Defendant Tommy Floyd Granger's Counsel (Robert Hambright) and he is not opposed to the motion.

/s/ *Nancy Y. Hart*

NANCY Y. HART

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel of record as follows:

VIA E-FILE NOTIFICATION

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VIA E-FILE NOTIFICATION

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DATED: October 24, 2008.

/s/ *Melody G. Chappell*

MELODY G. CHAPPELL